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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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H. GORDON SHIELDS
7830 NORTH 23RD AVENUE
PHOENIX, AZ 85021

EXAMINER

SOOHOO, TONY GLEN

ART UNIT	PAPER NUMBER
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1723

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DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/903,041

Applicant(s)

CARTER, E. RAY

Examiner

Tony G Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27, 29, 30, 32 and 33 is/are rejected.
- 7) ☒ Claim(s) 28, 31 and 34-36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-21, 24-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 9 are so vague in the scope of the phrase "at a relatively low RPM" one can not determine the scope of physical property of the motor. Whereas the phrase is vague in scope of the operative nature of the motor, little patentable weight has been given to this phrase since any RPM operation may be deemed as a "low RPM" since this is a relative term. It is deemed that the mere showing of any motor would fully anticipate the motor as claimed in the meets and bounds of the claim language.

Claim 24 fails to invoke a means plus function clause via the recitation of "element means" It is unclear in the function of the element.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 9-11, 14, 21, 24-26, 29, 32, 33, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Roepke Sr. 5439287.

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5. Claims 1-7, 9-15, 21, 24-26, are rejected under 35 U.S.C. 102(b) as being anticipated by Rosenblatt 3291454.

Note: With regard to holding and shaking a paint can, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

With regards to claim 2, note that the motor 16 has a motor housing secured to the base via the panel 14, which covers the rotor and stator of the motor.

With regards to claims 5 and 12, note the ring 18.

With regards to claims 6 and 13 note that the panel 14 has an annular recess for allowing the drive shaft pass there through.

With regards to claim 7 note that the clamp is a u shape with a base and two extending arms. This u-shaped platform clamp structure maybe defined as a back panel (the base of the U), a top panel (one arm of the U), and a bottom panel (the other arm of the U). It is further noted that the U-shaped clamp spins about the back panel portion thereby the arms of the U may define a top and bottom orientation of the top and bottom panels.

With regards to claims 24-26 note that the clamp is a u shape with a base and two extending arms. This u-shaped platform clamp structure maybe defined as a element means having a back panel (the base of the U) with 1st end area and 2nd end area, and two spring arms attached at each area. It is further noted that the U-shaped clamp spins about the back panel portion thereby the arms of the U may define a top and bottom orientation of the top and bottom panels.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenblatt 3291454 .

The Rosenblatt reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of electric motor 16 being of the type to produce 35-60 RPM. Rosenblatt teaches 5-20 RPM.

It is commonly known in the art of agitation and mixing that the amount of cycles of per unit time of oscillation of a container is a direct variable to the amount of kinetic energy supplied to produce an agitation effect by transfer of kinetic energy to the fluids in the container and increase in kinetic energy provide to the container motion in during would cause an increase in the rate of homogenization of the fluids.

It is also known that the change in rate of RPM in a motor is provided by either an increase in fuel energy to the rotor/stator drive or a change in gearing in the transmission to the drive shaft, such knowledge is commonly well known and within the skill of a person having ordinary skill in the art.

Whereas it is known to be desirable to increase the amount of RPM of the shaking effect so that the contents of the mixture is mixed faster, and whereby such a change of RPM to the motor is well within the skill of a person having ordinary skill in the art by changing a size of a gear or power input, since such a modification would have involved a mere change in the size of a component, (A change in size is generally

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recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).) it is deemed that it would have been obvious to one of ordinary skill in the art to modify the size of the motor, it's gearing ratio, or power amperage provided in order to provide a physical RPM of the motor to a 35-60 RPM such that the mixing time is shortened. It is noted that it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. In this case the motor produces 5-20 RPM, the desire for motor property of producing 35-60 RPM is desirable for an decrease in mixing time and discovering the optimum or workable ranges of the values of 35-60 RPM involves only routine skill in the art

8. Claims 7-8, 15-20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenblatt 3291454 in view of Blume et al 4125335.

The Rosenblatt reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the clamping means having a top panel and bottom panel for holding containers of different lengths, further including springs in each of the top and bottom panel portion areas.

The reference to Blume et al (Blume) teaches that a clamp system having a back panel which includes a intermediate U-shaped clamp to hold the sides of the container and an upper and lower end plates with a spring clamp section for holding the top and bottom of the container whereby the upper and lower spring clamps may accommodate for slight differences in the sizes of the container length in height.

In view of the teaching of the Blume reference that additional panels for the top and bottom ends of the container is provided with additional spring attachment means for the better holding of the container from both the sides and the top and bottom, it is deemed that it would have been obvious to one of ordinary skill in the art to substitute for the single clamp of Rosenblatt with the plural top and bottom end spring clamps and side clamps of Blume et al so that the container may be more securely held by the support means when the container is agitated.

9. Claims 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenblatt 3291454 in view of Sterrenberg 4318622.

The Rosenblatt reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the clamping means having a strap to hold the container.

The reference to Sterrenberg teaches that a clamp system having a two U shaped arms 93 and includes a strap 61, 62 for further securing the container to be shaken.

In view of the teaching of the Sterrenberg reference that additional straps for the top and bottom ends of the container may be provided for the better holding of the container, it is deemed that it would have been obvious to one of ordinary skill in the art to substitute for the single clamp of Rosenblatt with the U-shaped arms and straps of Sterrenberg so that the container may be more securely held by the support means when the container is agitated.

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Allowable Subject Matter

10. Claims 28, 31, 34-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following disclose mixing device for a container: Lorenzen 3735964, Wason 3330537, Mermelstein 2846201, Dilts 3747900, Lavine 2151123, Jorgenson 2109233, Gruzensky et al 2717700, Johnson 1490214.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G Soohoo whose telephone number is (703) 308-2882. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri.. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

tgs.

Tony G Soohoo
Primary Examiner
Art Unit 1723


TONY G. SOOHO
PRIMARY EXAMINER